

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of:

JAMES M. WOODS,

Respondent.

HUDALJ 98-8023-DB(R)

Decided: May 20, 1998

Paul E. Lee, Esquire
For the Respondent

David Wong, Esquire
For the Government

Before: ALAN W. HEIFETZ
Chief Administrative Law Judge

DETERMINATION AND RECOMMENDATION CONCERNING REINSTATEMENT

On January 5, 1998, James M. Woods ("Respondent") filed a Request for Order Terminating Debarment and Hearing seeking reinstatement from an indefinite debarment ordered on October 27, 1988. On January 29, 1998, the matter was referred to me for disposition. Respondent then filed a Petition for Disqualification of Administrative Law Judge on February 2, 1998, to which the Department of Housing and Urban Development ("HUD") responded on February 20, 1998. On February 27, 1998, I issued an Order denying the Petition for Disqualification, setting a schedule for the filing of the parties' written submissions, and directing the parties to address, *inter alia*, the applicable edition of 24 C.F.R. Part 24, HUD's debarment regulations, and the extent of this tribunal's jurisdiction thereunder.¹

¹Respondent requested an extension to file his submission pending a ruling on his Request for Reconsideration of the Petition for Disqualification. The Request for Reconsideration was never filed with this Office. Nevertheless, by Order dated March 25, 1998, I granted Respondent's request for an extension in view of his mistaken impression that he had filed a Request for Reconsideration.

On March 30, 1998, Respondent filed a Brief in Support of Petition to Terminate Debarment (“Respondent’s Brief”).² Respondent’s Brief asserts that because the indefinite debarment was ordered on October 27, 1988, the version of 24 C.F.R. Part 24, published May 26, 1988, and effective October 1, 1988 (“October 1988 regulations”), is controlling. *See* 53 Fed. Reg. 19179 (May 26, 1988). HUD maintains that the indefinite debarment, although ordered on October 27, 1988, was *initiated* on May 27, 1988, and accordingly, the regulations in effect at that time, *i.e.*, the April 1, 1988 edition, are applicable. Government’s Response to Respondent’s Brief and Respondent’s Petition to Disqualify Administrative Law Judge (May 8, 1998) (“HUD’s Response”). For the reasons set forth below, I find that the April 1, 1988, edition of 24 C.F.R. Part 24, governs these proceedings.

On May 27, 1988, the debarring official, notified Respondent of HUD’s intent to debar him indefinitely and that the April 1, 1988, regulations would govern any appeal. *See* HUD’s Response, Exhibit D. These regulations authorize a debarring official to “*initiate* debarments.” 24 C.F.R. § 24.5 (a) (emphasis added). The debarring official initiated Respondent’s indefinite debarment by the May 27, 1988, letter. The October 1988 debarment regulations state that “[l]imitations. . . *proposed* or imposed *prior to* [October 1, 1988] shall not be affected [by the October 1988 regulations].” 24 C.F.R. § 24.110(e) (emphases added). The October 1988 regulations also limit their applicability “to sanctions *initiated after*. . . October 1, 1988.” *Id.* Because Respondent’s indefinite debarment was proposed and initiated prior to October 1, 1988, the April 1, 1988, edition of 24 C.F.R. Part 24 is controlling. Those regulations provide that this tribunal shall “recommend to the official imposing the sanction whether. . . reinstatement is warranted.” 24 C.F.R. § 24.15 (b).

Findings of Fact

1. In 1983, Respondent was debarred for a five-year period from participation in HUD programs until May 11, 1988. HUD’s Response, Exhibit A; Respondent’s Brief at 3.

2. On May 27, 1988, Assistant Secretary Thomas T. Demery notified Respondent that because he participated in HUD programs during his five-year debarment, HUD proposed to debar him indefinitely. HUD’s Response, Exhibits D and E at 2.

²In addition to his Brief, Respondent filed another Petition for Disqualification of Administrative Law Judge. The Petition, however, is nothing more than a motion for reconsideration of the first Petition and it merely reiterates the content of the first Petition. As stated in the March 25, 1998 Order, the rules do not contemplate motions for reconsideration. *See* 24 C.F.R. Part 26, Subpart A.

3. On June 7, 1988, Respondent requested a hearing to appeal the indefinite debarment. He was ordered to file a response by August 29, 1988. The response date was extended twice until October 21, 1988. Respondent failed to file a response. Accordingly, his appeal was dismissed and he was debarred indefinitely by Order dated October 27, 1988. HUD's Response, Exhibit C; Respondent's Brief at 4.

4. In 1993, Respondent sought and was denied reinstatement from the indefinite debarment because, *inter alia*, he continued to participate in HUD programs despite the terms of his indefinite debarment which prohibited such participation. HUD's Response, Exhibit E. *See* Respondent's Brief at 3. In 1995, Respondent again sought reinstatement. Finding that there was insufficient evidence to support reinstatement, I recommended against termination of the debarment. HUD's Response, Exhibit F. *See* Respondent's Brief at 3.

Discussion, Conclusion and Recommendation

The regulations prescribe that proof of the following is the basis for reinstatement: (1) previously unavailable, new, material evidence; (2) dismissal of a previous indictment, reversal of a prior conviction, or termination of another agency's debarment, any of which were grounds for HUD's debarment; or (3) a change in ownership or management to justify a finding of present responsibility to do business with the Federal government. 24 C.F.R. § 24.15(a)(1). In addition, Respondent must offer "proof that the causes for the sanction have been eliminated," and he must certify that he understands and will abide by the applicable regulations. 24 C.F.R. § 24.15(a)(2).

Respondent does not even attempt to address, let alone prove, any of these factors. Rather, he fruitlessly seeks to relitigate the previous debarment actions, attacking their grounds and duration, while failing to address any grounds for recommending reinstatement. Moreover, Respondent contends that the passage of time as well as his philanthropic deeds are bases for reinstatement. The mere passage of time is not grounds for reinstatement, nor is service to the community, however laudable. *See* 24 C.F.R. § 24.15(a).

Having considered the parties' written submissions, I conclude that there is insufficient grounds to recommend reinstatement of Respondent. *See* 24 C.F.R. § 24.15(b).

ALAN W. HEIFETZ
Chief Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of this ORDER, issued by ALAN W. HEIFETZ, Chief Administrative Law Judge, in HUDALJ 98-8023-DB(R), were sent to the following parties on this 20th day of May, 1998, in the manner indicated:

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